IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 337 of 1988, 338 of 1988, 339 of 1988, 340 of 1988 and 341 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

MANGUBHAI MANILAL TAILOR
Versus
HITENDRA MANHARLAL MEHTA

Appearance:

1. First Appeal No. 337 of 1988
MR SK BUKHARI for Petitioner No. 1
MR. R.H. MEHTA for Respondent No. 2
MR SB VAKIL for Respondent No. 3-4
Respondent No. 1 served.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Mangubhai Manilal Tailor-appellant (original claimant) and others in other First Appeals have filed these appeals against the judgement and award dated 6.2.1986 passed by the Motor Accident Claims Tribunal (Auxiliary), Vadodara. These First Appeals arise out of Motor Accident Claim Petition Nos. 397 of 1983 and others. The Tribunal, so far as Motor Accident Claim Petition No. 397 of 1983 is concerned, by its aforesaid order directed that the original applicants-claimants do recover a sum of Rs. 44,340/- (rupees forty four thousand three hundred and forty only) together with proportionate costs and running interest at the rate of 6 per cent per annum from the date of application till realisation from all the opponents of the case who are jointly and severally liable to pay the same.

2. The facts giving rise to these appeals are as under:

2.1 Since all these appeals are filed against common judgement and award dated 6.2.1986 passed by the Motor Accident Claims Tribunal (Auxiliary), Vadodara, they are taken up together and decided by this common judgement. The claimants filed claim petitions which arose out of an accident which occurred on 22.12.1982 on National Highway No. 8 near village Kashipura at 2.00 p.m. Deceased Jamuben and Prabhavati and other injured applicants were travelling in Mini Luxury Bus bearing registration No. GTT 5642 (hereinafter referred to as Luxury Bus'). The said luxury bus which was owned by opponent No. 1 Hitendra Manharlal Mehta was driven by driver Bhagwanji. The said luxury bus was insured with opponent No. 2 Oriental Fire and General Insurance Company. Oil Tanker bearing registration No. GTX 5762 (hereinafter referred to as the tanker) which is involved in the accident was owned by opponent No. 3 Bhagwanji Jayantilal and was insured with New India Assurance Company, opponent No. 4.

2.2 It was alleged in the claim petition that the injured applicants and both Jamuben and Prabhavati were going on pilgrimage and they had started from Vyara and were travelling in the luxury bus. The oil tanker came from the opposite direction. The luxury bus in which the applicants and the deceased were travelling was going

from south to north and the tanker was going from north to south. It is the case of the applicants that there was head-on collision in the middle of the road and passengers travelling in the luxury bus sustained injuries. Passengers Jamuben and Prabhavatiben sustained fatal injuries and they succumbed to the same. Drivers of luxury bus and the tanker died on the spot. It was alleged that both the luxury bus driver and the tanker driver were driving their respective vehicles in an excessive speed and in a rash and negligent manner and there was head-on collision which resulted into death of two drivers, two passengers and numerous persons travelling in the luxury bus sustained injuries. The vehicles were badly damaged.

2.3 So far as First Appeal No. 337 of 1988 arising out of MACP No. 397 of 1983 is concerned, injured applicant has claimed Rs. 1,50,000/- as compensation. As regards First Appeal No. 338 of 1988 arising out of MACP No. 399 of 1983, the claimants claimed Rs. 1,50,000/- as compensation for injury sustained by him. So far as First Appeal No. 339 of 1988 arising out of MACP No. 400 of 1983 is concerned the claimants claimed Rs. 1,00,000/- as compensation for the injury caused to them. As regards First Appeal No. 340 of 1988 arising out of MACP No. 401 of 1983, in this case the passenger died. Therefore, the heirs and legal representatives of the deceased claimed Rs. 3,00,000/- as compensation. First Appeal No. 341 of 1988 arises out of MACP No. 485 of 1983. The claimants have claimed Rs. 3,00,000/- as compensation.

3. Before the Tribunal opponent No. 1, owner of luxury bus and the insurance company with which the luxury bus was insured have filed identical written statements. They have contended that the driver Bharatsinh was driving luxury bus at a moderate speed and on the correct side of the road. They have contended that the accident occurred due to rash and negligent driving of the tanker driver. They have further contended that they are not liable to pay any compensation to the applicants. They have further contended that the claims of the applicants are excessive.

3.1 Identical written statements have been filed by opponent Nos. 3 and 4 i.e. owner of the tanker and the Insurance Company, namely, New India Assurance Company. They have contended that the accident occurred due to rash and negligent driving of the luxury bus driver, Bharatsinh. They contended that the tanker driver was driving the tanker at a moderate speed and on correct

side of the road and that the tanker driver was not at all responsible for the accident. They further contended that the claims of the applicants are highly excessive.

3.3 Thereafter, parties have led oral evidence as well as documentary evidence in this behalf. They have also examined the particulars regarding injury case. Injury certificate has also been produced in this behalf. As regards opponents, they have also produced evidence on record.

4. Thereafter, the Tribunal has considered the entire evidence on record. The Tribunal has held, so far as negligence is concerned, that the applicants proved that the deceased drivers of opponent Nos. 3 and 1 drove their motor truck No. GTX 5762 and Mini Luxury Bus No. GTT 5642 respectively rashly and negligently and thereby caused injuries to the applicants. In view of the same the Tribunal has held that in this case it is established that the accident occurred due to rash and negligent driving of both the drivers and therefore this is a case of composite negligence and the negligence is apportioned in the ratio of 50 percent to each of the drivers.

5. We have considered the evidence on regard. We have also considered the fact that in this case there was a head on collision and the driver of luxury bus and truck both died and there was fatal accident and several persons were injured. It may be noted that before the Tribunal, there were 21 applications filed by various injured persons. However, we are not taking up all those applications. Before us there are only five appeals. Therefore, we will deal with them only. In view of the fact that both drivers died and one passenger died and several other passengers injured it shows that both the drivers were rashly and negligently driving their respective vehicles at an excessive speed.

6. We have gone through the record of the case. There is voluminous evidence on record to show that the drivers of both the vehicles involved in the accident were driving their respective vehicles in an excessive speed and in a rash and negligent manner. In our view the fact that the accident occurred in a broad day light at 2.00 p.m. shows that the vehicles were driven at an excessive speed. The national highway is wide enough for four vehicles to pass. Both the vehicles involved in the accident were driven in the middle of the road. Both the drivers had not taken proper care and caution while driving on highway. They could not control their

vehicles with the result that both the vehicles collided and there was head on collision. Both the vehicles were extensively damaged. Therefore, this is a fit case where the principle of res ipsa loquitur is applicable. In view of this fact, we are of the view that the Tribunal is right in holding that the accident occurred due to rash and negligent driving of both the drivers of the vehicles, namely, driver of luxury bus and the driver of tanker. Therefore, this is a case of composite negligence. The Tribunal, considering the above facts, apportioned the negligence in the ratio of 50% each. Since neither the owner nor the injured have filed appeal challenging the aforesaid finding of the Tribunal, we are of the view that the said finding of the Tribunal is not assailed and we confirm the said finding of the Tribunal.

7. Now we will deal with each First Appeal separately.

7.1 As regards First Appeal No. 337 of 1988 arising out of MACP No. 397 of 1983, Mangubhai Manilal applicant has claimed Rs. 1,50,000/- as compensation. He submitted that he has sustained injuries on the right hand, jaws, knees and had fracture of left hand. His deposition is on record at Exh. 273. Medical certificate is at Exh. 271. It is stated that he was treated in SSG Hospital for two days. Thereafter he was treated as indoor patient in Sadhna Hospital, Surat for about 15 days. His hand was plastered. Wiring of the teeth was done in Surat. Medical certificate produced at exh. 271 shows that the applicant had the following injuries:-

1. Collis fracture of the right wrist
2. Fracture of the hard pattela both maxiliary sinuses and right zygomatic bone.
3. Fracture of the mandible-mid line to left side.

7.2 The evidence of the applicant shows that the applicant was treated by Dr. Satyadev Patel, Dr. Jitendra Vyas, Dr. Shrikant Shah and Dr. Vashi of Surat. Even after discharge from the hospital, the applicant was advised to follow up treatment. He has stated that he took follow up treatment for about six months. He was required to come to Surat from Vyara. Dr. Shah, orthopaedic surgeon of Surat is examined at Exh. 284. He has stated that the applicant was treated at Ashakta-Ashram Hospital, Surat. Dr. Shah had examined the applicant for the purpose of assessment of disability on 8.9.1983 and he found the following injuries:

1. Left Collis fracture is well united with wasting of left fore head.

2. Fracture of nasal bone is male united and will require rhinioplasty.

7.3 Dr. Shah has stated that there was mal occlusion on right side with deviation of the jaw. Dr. Shah assessed permanent partial functional disability at 30 per cent. In the opinion of the doctor overall disability would be 15 per cent. Over and above Dr. Shah has described various injuries suffered by the injured applicant.

7.4 In view of the aforesaid facts and circumstances of the case, the Tribunal has considered the fact that the injured was aged 42 years and he had business of cloth at Vyara. His income from business is assessed at Rs. 15,000/- per annum. In view of the same the Tribunal has awarded a sum of Rs. 4,000/- for loss income for three months. As regards future economic loss, though the overall disability is assessed at 15%, the Tribunal has taken overall disability at 7.5%. The Tribunal taking average yearly income at Rs. 14,000/and applying a multiplier of 15, determined future economic loss at Rs. 21,000/-. In view of above, the the Tribunal has awarded following amounts:

1. Pain, shock and suffering	Rs. 15,000/-
2. Expenses	Rs. 4,339/-
3. Loss of business	Rs. 4,000/-
4. Future economic loss	Rs. 21,000/-
Total	Rs. 40,339/-

7.5 Mr. Sunil Mehta, learned counsel for the original claimant-appellant has submitted that in view of the serious injury which the applicant has sustained and in view of the medical evidence wherein doctors also opined the same. In fact, Dr. Shah has assessed partial permanent disability at 30% and ultimately overall disability has been worked out to 15%. The learned counsel for the original claimant has also stated that the claimant was a businessman and has business income of Rs. 15,000/- per annum. Looking to the injuries and the income and looking to the fact that the claimant was not able to carry on business for three months, more amount ought to have been awarded to the claimant. It may be noted that in appeal the appellant has claimed additional Rs. 15,000/-

7.6 Mr. A.R. Mehta for Mr. R.H. Mehta, learned advocate and Mr. A.M. Kapadia, for Mr. S.B. Vakil, for the respondent Insurance Company have strongly opposed to the contention of the learned counsel for the appellant and submitted that this court should not grant any additional amount. According to their submissions, the Tribunal has awarded just and reasonable compensation and this court may not increase the amount.

7.7 We have considered the evidence on record. We have also considered medical opinion and the injury and the disability sustained by the injured. We have also considered various bills produced by the original claimant for claiming medical expenses. We have also considered business income of the original claimant and the loss suffered by him. We have also considered future economic loss suffered by the applicant in this behalf. As per the medical evidence the original claimant has suffered disability of 7.5%. His average yearly income was determined at Rs. 14,000/- by the Tribunal. Though the Tribunal has considered disability at 7.5% the Tribunal has assessed 10% disability. We have considered the injuries suffered by the claimant. In our view Dr. Shah who has examined the claimant has clearly opined that there was mal occlusion on right side with deviation of the jaw and he assessed permanent partial disability at 30%. In his opinion the overall disability should be at 15%. We have considered the opinion of Dr. Shah that the claimant suffered overall disability of 15%. If we consider the opinion of Dr. Shah that the claimant has suffered overall disability at 15% and taking the claimant's yearly income at Rs. 14,000/-, the loss suffered by the claimant would come to Rs. 2100/- per year and applying a multiplier of 15, future economic loss would be Rs. 31500/- (Rs. 2100 x 15). In our view the Tribunal has rightly awarded the amounts under the head pain, shock, suffering etc. at Rs. 15,000/-, expenses at Rs. 4,339/-, loss of income for three months at Rs. 4000/-.

7.8 As regards future economic loss the Tribunal has awarded Rs. 21,000/- considering disability at 10%. We have assessed permanent partial disability at 15% considering the opinion of Dr. Shah. Thereafter, we have adopted multiplier of 15. Therefore, future economic loss is modified by taking the figure of Rs. 2100/- instead of Rs. 1400/- per year. In view of the same, the appellant is entitled to the following amounts:

Pain, shock and suffering Rs. 15,000/-

medical expenses Rs. 4,339/-
loss of business for three months Rs. 4,000/-
future economic loss Rs. 31,500/-

Total Rs. 54,839/-
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7.9 To the above extent the appeal is partly allowed. Both the Insurance Companies are jointly and severally liable to pay additional amount of Rs. 10,500/- which we have awarded. The said amount will carry interest at the rate of 6% per annum from the date of application till realisation.

8.1 First Appeal No. 338 of 1988 arises out of M.A.C.P. No. 399 of 1983. The applicant has claimed Rs. 1,50,000/- as compensation. As per the information and the evidence produced by him, he has been examined at Exh. 132. He has stated that he was hospitalised as indoor patient in SSG Hospital from 22.12.1982 to 27.12.1982. His hand was kept under plaster for about two months. He was required to come to SSG Hospital for follow up treatment for about one and half months. He was advised crutch walking for 20 days. Thereafter he was advised to walk with the help of stick. He stated that he cannot lift heavy weight with his right hand. We have considered evidence of Dr. Shrikant Shah. Dr. Shah has stated that the applicant was admitted as indoor patient in Ashaktashram and was under this treatment. The applicant had the following injuries:-

1. Dislocation of left hip.
2. Fracture of right shaft hmerus.

8.2 As per the deposition of Dr. Shah the applicant was admitted on 27.12.1982 and was discharged after about one month. Thereafter, the applicant was advised physio therapy treatment and follow up treatment. Dr. Shah stated that he had examined the applicant on 8.9.1983 for the purpose of disability. On examination Dr. Shah found the following:

1. Right shoulder - there is a marked wasting of muscles around right shoulder.

There is restriction of right shoulder movement by terminal 25 degree. On the left hip there is terminal restriction and pain in extrimities of hip movements. There is seasonal pain. There is limp also.

8.3 Dr. Shah assessed permanent partial functional disability at 20%. He has also issued certificate which is at Exh. 286. In view of the aforesaid medical evidence of Dr. Shah we are of the view that the applicant could not carry on his motor mechanic work for about two months. In view of the same, the applicant is entitled to Rs. 15,000/- under the head pain, shock and suffering.

8.4 For claiming medical expenses the applicant has produced bills at Exhs. 137 to 152. He has stated that he has incurred expenses conveyance also. He has spent amount both Vadodara and Surat. The Tribunal considering the evidence has awarded in all a sum of Rs. 2,727/- as medical expenses.

8.5 It has been stated that the applicant has suffered permanent partial disability. He has stated that he was working as mechanic in one workshop and was getting salary of Rs. 450/- per month. His total income is assessed at Rs. 700/- per month. As per the say of the applicant as well as the opinion of the doctor, he had permanent partial disability at 20%. In view of the same, the Tribunal has considered that the applicant would suffer month loss of Rs. 140/- i.e. Rs. 1,680/- per annum. The applicant is aged 28 yeas and therefore the Tribunal has adopted multiplier of 15 and assessed future loss of earning capacity at Rs. 25,200/-. The Tribunal has awarded a sum of Rs. 500/- towards special diet expenses and Rs. 500/- under the head attendant charges. In all the Tribunal has awarded a sum of Rs. 43,927/-.

8.6 We have considered the evidence of applicant, evidence of Dr. Shrikant Shah, certificate issued by him and medical bills produced by the applicant. We have also considered income of the applicant. In our view regarding future loss of income, if income of the applicant is assessed at Rs. 900/- instead of Rs. 700/looking to the work which the applicant was doing, the same will meet the ends of justice. Considering disability at 20% and taking monthly income of Rs. 900/-, monthly loss of income of the applicant would come to Rs. 180/- i.e. Rs. 2,160/- per year. As the age of the applicant is 28 years, multiplier of 15 is adopted. Therefore, future loss of earning capacity would come to Rs. 32,400/-. We therefore award a sum of Rs. 32,400/- under the head future economic loss instead of Rs. 25,200/- awarded by the Tribunal. We award additional

amount of Rs. 7,200/-(Rupees seven thousand two hundred) (Rs. 32,400 - Rs. 25,200). To that extent, the order of the Tribunal is modified.

8.7 As regards the awards under other heads, namely, pain, shock and suffering Rs. 15,000/-, medical expenses Rs. 2,727/-, special diet Rs. 500/-, attendant charges Rs. 500/-, the Tribunal has rightly awarded and therefore we do not intend to interfere with the said findings of the Tribunal. In view of the same, the applicant is entitled to the following:

1. Pain, shock and suffering Rs. 15,000/-
2. medical expenses Rs. 2,727/-
3. Special diet Rs. 500/-
4. attendant charges Rs. 500/-
5. future economic loss Rs. 32,400/-

Total Rs. 51,127/-

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8.8 In the light of the above above, the appeal is partly allowed. Both the Insurance Companies are jointly and severally liable to pay additional amount of Rs. 7200/- which we have awarded. The said amount will carry interest at the rate of 6% per annum from the date of application till realisation.

9.1 First Appeal No. 339 of 1988 arises out of M.A.C.P. No. 400 of 1983. Injured applicant Keshav Nagar has claimed Rs. 1,00,000/- as compensation. He was examined before the Tribunal at Exh. 162. As per the evidence on record he was treated as indoor patient in SSG Hospital for seven days. His right leg was operated and nail was inserted. He had fracture of mandible and jaw. Even after discharge from SSG Hospital, Vadodara, he was treated in Ashaktashram Hospital at Surat. He was discharged from there on 15.1.1983. Thereafter, the applicant went to Vyara but he was required to come to Surat for follow up treatment. He came to Surat 8 times for follow up treatment. He could walk with the help of crutches for about one month. Thereafter he was walking with the help of stick. He has stated that he cannot walk for long distance. He finds difficulty in chewing. The aforesaid version of the applicant is corroborated by the evidence of Dr. Shah

who is examined at 284. Dr. Shah has issued disability certificate which is at Exh. 285. As per Dr. Shah the applicant was admitted in Ashaktashram on 28.12.1982 and was under his treatment till 15.1.1983. Dr. Shah has stated that the applicant had the following injuries:-

1. Fracture of right tibia fibula middle lower third right.

2. Fracture of right fourth, fifth, sixth, seventh ribs.

3. Fracture of right zygoma.

9.2 As per Dr. Shah the applicant was discharged on 15.1.1983 but he was advised follow up treatment and physio therapy. Dr. Shah again examined the applicant on 8.9.1983 for the purpose of assessment of disability and he found the following injuries:

1. Fracture of right tibia fibula is united.
2. There is wasting of right thigh muscle bone. On prolonged walking and standing edema on leg.
3. fracture of ribs fourth, fifth, sixth and seventh had united but there is seasonal pain.
4. Fracture of zygoma right had united but jaw opening is 50 per cent.

9.3 Dr. Shah has assessed permanent partial disability at 20%. He had also issued necessary certificate which is at Exh. 285. The Tribunal considering the prolonged treatment and serious nature of injuries suffered by the applicant, awarded a sum of Rs. 25,000/- as compensation under the head pain, shock and suffering.

9.4 The applicant has produced medical bills for claiming medical expenses at Exh. 168 to 185, 186, 189,140. The Tribunal considering the evidences produced by the applicant awarded a sum of Rs. 6001/- under the head medical expenses, hospital treatment etc.

9.5 The applicant has also produced income-tax returns at exh. 163 to 166 to show his income. As per say of the applicant, his average income is assessed at Rs. 12,000/- per year. He has stated that he has suffered permanent partial functional disability at 15% as per the certificate of Dr. Shah. In view of the same he has claimed future economic loss at Rs. 12,000/-. He has stated that he is aged 50 years. He has therefore claimed 10 years loss.

9.6 In view of the aforesaid evidence on record, the Tribunal has awarded Rs. 25,000/- towards pain, shock and suffering, Rs. 6001/- under the head medical expenses, and Rs. 12,000/- towards future economic loss.

9.7 We have considered evidence on record, certificate issued by Dr. Shah. In view of the evidence furnished by the applicant and the certificate issued by Dr. Shah that the applicant had undergone prolonged treatment, we are of the view that the amount of Rs. 25,000/- awarded by the Tribunal under the head pain, shock and suffering is just and reasonable. We have also considered medical bills produced by the applicant. In view of the same, the Tribunal was right in awarding Rs. 6001/- under the head of medical expenses, hospital treatment etc. We therefore confirm the finding of the Tribunal in this behalf. The Tribunal has stated that the applicant has average yearly income at Rs. 12000/-. He has partial functional disability at 15%. However, the Tribunal has taken partial functional disability at 10%. In view of the same the Tribunal assessed yearly loss at Rs. 1200/-. As the applicant was aged 50 years the Tribunal has adopted multiplier of 10 and calculated future loss of earning capacity at Rs. 12000/-.

9.8 We have considered the evidence produced by the applicant. We have also considered the certificate issued by Dr. Shah. In our view looking to the injury and prolonged illness of the applicant, if partial functional disability is assessed at 15%, the same will be in the interest of justice. Therefore, taking average income of the applicant at Rs. 12000/- per annum and adopting permanent partial functional disability at 15% then yearly future economic loss would come to Rs. 1800/and applying a multiplier 10 thereto the future economic loss is worked out to Rs. 18,000/-. In view of the same, we award Rs. 18,000/- under the head future economic loss instead of Rs. 12,000/- as awarded by the Tribunal. To that extent, the order of the Tribunal is modified. In view of the above, the applicant is entitled to the following:

1. Pain, shock and suffering Rs. 25,000/-
2. medical expenses Rs. 6,001/-
3. future economic loss Rs. 18,000/-

Total Rs. 49,001/-

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9.9 In the light of the above, the First Appeal is partly allowed. Both the Insurance Companies are jointly and severally liable to pay additional amount of Rs. 6000/- which we have awarded. The said amount will carry interest at the rate of 6% per annum from the date of application till realisation.

10.1. First Appeal No. 340/1988 arises out of M.A.C.P. No. 401 of 1983. Induben Jamubhai, widow of deceased Jamubhai ha claimed Rs. 3,00,000/- as compensation. The deceased Jamubhai was travelling in luxury bus along with the applicant and the deceased sustained injuries which proved fatal on 24.12.1982. Jamubhai survived for about 36 hours and thereafter he succumbed to the injuries. Deposition of widow Induben Jamubhai is at Exh. 47. The deceased had injuries on his forehead, chest, hand and legs. As per the evidence of the applicant widow, the deceased was doing the work of diamond polishing at Vyara and the deceased was earning Rs. 15000/- per year. The applicant has produced books of accounts through witness Hirabhai Gomanbhai at Exh. 22. He produced the books of accounts at exh. 224 to 228. The applicant has also examined Mohanbhai Chhotalal at Exh. 278 for proving the account. It was stated that the deceased was doing the work of diamond polishing.

10.2 In view of the evidence produced by the applicant and on the basis of other evidence, the Tribunal has estimated prospective future income of the applicant at Rs. 13,000/- per year. It was stated that the deceased was spending Rs. 7200/- per year for himself from the prospective estimated income and the Tribunal has deducted a sum of Rs. 7,000/- as personal expenses from the estimated income of Rs. 13,000/-. Therefore, the Tribunal has assessed Rs. 6000/- annual dependency loss. The Tribunal has considered the fact that the deceased was aged 38 years and applying a multiplier of 14 thereto, determined loss of dependency benefit at Rs. 84,000/-. The Tribunal has also determined loss of expectation of life at Rs. 10,000/-. The Tribunal has also awarded a sum of Rs. 10,000/- under the head pain, shock and suffering and Rs. 253/- under the head expenses. In all the Tribunal has awarded a sum of Rs. 1,04,253/-.

10.3 We have considered the evidence on record produced by widow of deceased Jamubhai and also other evidence of Mohanbhai Chhotalal and the books of

accounts. We consider the fact that the deceased Jamubhai was doing diamond polishing work. We have taken into consideration the books of accounts available on record. In our view total income of the deceased may be taken at Rs. 13,000/-. Looking to the fact that the deceased was doing diamond polishing work and he was spending Rs. 6000/- on his personal expenses then annual dependency loss would be Rs. 7000/-. The fact that the deceased was aged 38 years and adopting multiplier of 14 to the annual dependency loss of Rs. 7000/-, dependency loss would be determined at Rs. 98,000/-.

10.4 The compensation awarded by the Tribunal under the head loss of expectation of life at Rs. 10,000/-, pain shock and suffering at Rs. 10,000/- and expenses Rs. 253/- is just and proper and we confirm the findings of the Tribunal in this behalf.

10.5 In view of the above, the applicant is entitled to compensation under the following heads:

1.	Dependency loss Rs. 98,000/-	
2.	loss of expectation of life	Rs. 10,000/-
3.	pain, shock and suffering	Rs. 10,000/-
4.	expenses	Rs. 253/-

Total		Rs. 118,253/-
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10.6 In the light of the above, the First Appeal is partly allowed. Both the Insurance Companies are jointly and severally liable to pay additional amount of Rs. 14000/- which we have awarded. The said amount will carry interest at the rate of 6% per annum from the date of application till realisation.

11.1 First Appeal No. 341 of 1988 arises out of M.A.C.P. 485 of 1983. Injured applicant Ranjit Shivlal Mistry has claimed Rs. 3,00,000/- as compensation. The applicant is examined at exh. 191. As per his evidence he sustained injuries on his leg, jaw and teeth and fore-head. He was treated as indoor patient in SSG Hospital for 20 days. Nail was inserted and plaster was thereafter applied. He had injury on his thigh. He had fracture of jaw. Wiring of teeth was done in hospital. Thereafter he was treated in Ashaktashram hospital in Surat for five days as indoor patient. He thereafter took treatment in SSG Hospital in OPD, Plaster was opened after three months. Three plasters were applied. He has

stated that he was required to take treatment for about six months in all. The applicant has produced case paper at Exh. 92. Disability certificate is produced at exh. 290. To prove disability the applicant has examined doctor Arvind Patel at exh. 289. Dr. Patel has stated that he has found the following injuries when he examined the applicant on 22.12.1982.

1. Tenderness at the left trauchentry region with painful bursa formation at the nail end.

2. Hip movement on the left side painful and restricted by terminal 20 degree-mainly the internal rotation and abduction and flexion.

3. difficulty in sitting cross-legged and squat.

4. Limping present on left side.

5. Shortening of left leg by 1/2"

6. Ankle joint movement left side painful and restricted by terminal 15 decree mainly in the dorsi flexion.

7. difficulty in walking a long distance or standing for a long time.

11.2 As per Dr. Patel X-ray of the left thigh and leg showed a uniting fracture with a nail in the femur with a marked oster thorasis and estoeo arthritis changes in the ankle joint. Dr. Patel assessed permanent partial disability at 15%. He has issued a certificate which is at Exh. 290. He has opined that overall disability would be 7.5%. In view of the aforesaid injury the Tribunal has awarded a sum of Rs. 15,000/- as compensation for pain, shock and suffering.

11.3 The applicant has produced medical bills at exh. 196 to 207, 210, 208 and 220. The Tribunal has awarded a sum of Rs. 4,190/- as medical expenses.

11.4 As regards economic loss the applicant has stated that he was working in India as electrician. He had also gone to Yaman for doing the work and he was earning Rs. 2200/- per month while he was working in Rashid Construction Company, at Yaman. The Tribunal has assessed that the applicant would get Rs. 1400/- per month in future and that he had started salary of Rs. 800/- per month. The Tribunal has assessed that the earning capacity which is adversely affected at the time

of accident and Rs. 1400/- per month is the other end of his earning capacity. The applicant has overall disability at 7.5 per cent. In view of the same, the Tribunal has assessed disability at Rs. 90/- per month i.e. Rs. 1080/- per year. The applicant is aged 26 years. The Tribunal has taken multiplier of 15. In view of the same the Tribunal has assessed future economic loss at Rs. 16200/-. Thus the Tribunal has in all given an award of Rs. 35,388.65 ps.

11.5 The learned counsel for the appellant has submitted that the Tribunal has committed an error in fixing Rs. 90/- per month. If we consider Rs. 1400/as income per month and 7.5% disability, then it comes to Rs. 105/- per month i.e. Rs. 1260/- per year, and applying multiplier of 15, the amount would come to Rs. 18,900/-.

11.6 We have considered the evidence on record and the medical bill produced by the applicant as also his income. According to us looking to the fact that the applicant was working at Yaman, we fix monthly income of the applicant at Rs. 1600/- and considering the disability at 7.5 per cent, economic loss would come to Rs. 120/- per month i.e. Rs. 1440/- per year and applying thereto a multiplier, the amount would come to Rs. 21,600/-. The Tribunal has awarded other expenses under the head pain, shock and suffering Rs. 15,000/-, medical expenses at Rs. 4390/- which are just and legal. We therefore confirm the finding in this behalf. As regards future economic loss we are of the view that Rs. 21,600/- should be awarded instead of Rs. 16,200/- as awarded by the Tribunal. To that extent, the order of the Tribunal is modified. In view of the above, the applicants are entitled to the following:

1. Pain, shock and suffering Rs. 15,000/-
2. medical expenses Rs. 4,390/-
3. future economic loss Rs. 21,600/-

Total Rs. 40,990/-

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11.7 In the light of the above, the First Appeal is partly allowed. Both the Insurance Companies are jointly and severally liable to pay additional amount of Rs. 5400/- which we have awarded. The said amount will carry interest at the rate of 6% per annum from the date of application till realisation.

12. In view of the above observations, all these appeals are partly allowed. Interest at the rate of 6% on the additional amounts in each of the First Appeals is awarded. Both the Insurance Companies are jointly and severally liable to pay the amounts to the claimants along with interest as stated above.

(K.R. VYAS, J)

(K.M. MEHTA, J)
(pkn)